APPENDIX "A"

Summary of "Immutable Judgment: Murder and Capital Punishment In Illinois—A Survey," by the Illinois Division, American Civil Liberties Union (March, 1965, unpublished)

The committee found, first of all, that the death penalty is too often not a punishment for murder, but for refusing to plead guilty to murder. Such, indeed, is the situation in the instant case of William Witherspoon, who, contending that the slaying of the police officer was accidental, refused to accept a long-term sentence. There is only one case in our generation in Illinois where a death sentence was imposed after a plea of guilty to murder. *People* v. *Wilson,* 29 Ill. 2d 82, 193 NE 2d 449 (1963).

The report set forth some of the situations in which there is bargaining between the State and the defense, dependent upon circumstances other than the merits of the case. The report reached the conclusion that almost every defendant indicted for murder has it within his power to save himself from the chair by making a deal with the prosecution and that sometimes such deals are made even when the circumstances are such that the defendant could not reasonably have been convicted of murder.

Next, the committee found that adventitious or fortuitous circumstances sometimes send men to their death. In the case of Vincent Ciucci (*Ciucci* v. *Illinois,* 356 U.S. 571 (1958)), the State tried Ciucci three times successively on charges of murder until it obtained the death sentence, although all of the offenses were committed at the same time as part of one chain of events. The committee

found that much may depend upon whether the crucial evidence has been preserved and is still available to counsel for the defense. This in turn may depend upon how soon after the crime counsel was obtained, or it may depend upon sheer chance. Given the most skilled and diligent attorney, the most learned and fairest of judges, the most able of juries, the outcome of a criminal trial may, nonetheless, be determined by chance. True, much else is a matter of chance, but the very life of an individual should not depend upon chance in a system of constitutional justice.

The Committee found that the defense is seriously handicapped by lack of pre-trial discovery in criminal trials, citing the case of Lloyd Eldon Miller, (*Miller* v. *Pate,* 386 U.S. 1, 87 S.Ct. 785 (1967) with which this Court is familiar, as a classic example.

The committee found that in this battle for life the State has a full range of technical and scientific resources. The defendant is granted no such assistance. Frequently, he must depend upon voluntary counsel working free and either paying all or part of the expenses, again as in the Lloyd Eldon Miller case, the case of Paul Crump (*People* v. *Crump,* 5 Ill. 2d 251; 12 Ill. 2d 402) and others.

The committee found that the extensive appellate procedures are largely confined to questions of law. On disputed fact questions, the findings of a single judge or jury in general are decisive from beginning to end. This is illustrated by the *Townsend* case (*Townsend* v. *Sain,* 372 U.S. 293 (1963)) and others which have come before this Court.

The committee found that, in the ultimate sense, the jury was called upon to make a determination as to the state of mind of the defendant when the act was committed, a field in which there is too little knowledge and virtually no certainty. A classic example of this is *Alcorta* v. *Texas,* 355 U.S. 28 (1957).

Of course, too, the committee found that in a disproportionate number of cases those sentenced to death are Negroes or from other minority groups, and are largely uneducated, at the bottom of the ladder economically and socially, seldom with strong family ties and seldom able to employ counsel. Persons no worthier than those condemned receive more generous treatment at the hands of society because they are better situated. "To him that hath shall be given; from him that hath not shall be taken."

APPENDIX "B"

BELIEF IN CAPITAL PUNISHMENT AND JURY PERFORMANCE

By Cody Wilson
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The Problem . . .

. . . Do people who believe in capital punishment differ from those who have scruples against capital punishment in other psychological characteristics relevant to the jury trial process?

A study of 187 junior and senior college students was carried out in the spring of 1964 in order to provide an answer to the general question.

The Study

The general question was differentiated into several more specific questions; do people who believe in capital punishment differ from those with scruples against capital punishment in terms of: a) tendency to say guilty in response to simulated capital cases; b) confidence in decisions of guilt and innocence; c) degree of punishment (excluding death penalty) recommended; d) bias in favor of the prosecution and against the defendant; and e) bias against insanity as a defense plea.

Information was obtained from the students by means of a questionnaire that contained several different parts.

One part of the questionnaire was composed of a series of simulated capital cases; that is, brief written descriptions of the facts presented to the jury in five criminal

court cases. The individual was asked to assume that he is a member of the jury before which the case is being tried and, on the basis of facts and his interpretation and evaluation of them, to reach a decision of guilt or innocence. He was also asked to indicate the degree of confidence that he had in each decision. The cases involved rape and murder, burglary and murder, robbery and murder, rape, and domestic homicide. The number of cases in which the verdict of guilty was reached was used as an index of the tendency to say guilty.

The subjects were also asked the question the answer to which forms the basis of a challenge for cause, "Do you have conscientious scruples against the death penalty, or capital punishment for a crime?" The answers were either yes or no.

The subjects were asked to agree or disagree with a series of statements such as;

a) The district attorney's interpretation of the facts in a criminal case are usually more reliable than the defense lawyers.

b) If two witnesses gave conflicting testimony in a criminal case, I would probably believe the witness for the prosecution rather than the witness for the defense.

c) If I were a member of a jury, I could never vote "not guilty" for a man whose defense was insanity.

d) The plea of "not guilty by reason of insanity" is a loophole that allows many criminals to escape punishment.

The number of statements, similar to the first two, that the subject agreed with was used as a measure of the

tendency to be biased in favor of the prosecution. The number of statements, similar to the latter two, that the subject agreed with was used as a measure of the tendency to be biased against insanity as a defense plea. There were eight statements of the first type and seven of the second type.

Lastly, the subjects were asked to assume that the jury had agreed upon a verdict of guilty in each of the simulated cases. Now he was asked to recommend an appropriate punishment. The allowable punishments ranged from suspended sentence to life imprisonment but did not include the death penalty. Each subject was given a score based on the amount of punishment recommended.

The subjects were divided into two groups based on their answer to the question, "Do you have conscientious scruples against capital punishment?", and the two groups were compared in terms of their responses to the other question.

The Results

People who have scruples against capital punishment are less likely to say guilty than are people who believe in capital punishment.

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People who believe in capital punishment are more confident of their decisions of guilt and innocence than are people who have scruples against capital punishment.

• • •

That is, people who believe in capital punishment are not only more likely to say guilty, they are also more sure that they are right in their decision.

People who believe in capital punishment are likely to assess a more severe punishment—even without the death penalty—than are people who have scruples against capital punishment.

• • •

People who believe in capital punishment are more likely to be biased in favor of the prosecution than are people who have scruples against capital punishment.

• • •

People who believe in capital punishment are more likely to be biased against insanity as a defense than are people who have scruples against capital punishment.

• • •

Similar results were found for a similar group of 61 students in New York City.

Conclusions

If we may assume that the observed relationships between these variables hold among the adult population at large (and it is generally found that relationships among such value and behavior items are stronger among adults in general than among college students), then we may conclude that a jury selected by systematically excluding people who have scruples against capital punishment is biased in the direction of being more likely to bring a verdict of guilty, being more confident of this decision of guilt, favoring the prosecution in opposition to the defense, being prejudiced against the plea of not guilty by reason of insanity, and assessing a more severe punishment excluding the death penalty.

If the existence of such systematic biases in juries as a result of the selection process constitutes denial of fair trial, then disqualification of jurors for scruples against capital punishment does constitute denial of fair trial.